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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,563	10/23/2003	Frederic Legrand	05725.1255-00	6452
22852	7590	12/19/2006		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER VENKAT, JYOTHSNA A	
			ART UNIT	PAPER NUMBER
			1615	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
31 DAYS		12/19/2006	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/690,563

Applicant(s)

LEGRAND, FREDERIC

Examiner

JYOTHSNA A. VENKAT Ph. D

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-71 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-59 are, drawn to

1. An oxidizing cream oil-in-water emulsion for treating a keratin material, comprising:

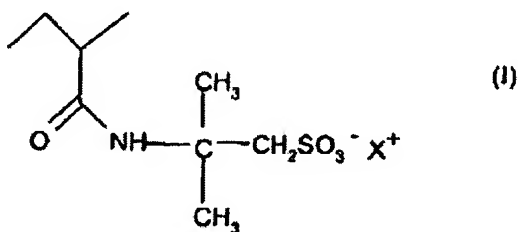
at least one oxidizing agent,

at least one fatty alcohol chosen from (C<sub>8</sub>-C<sub>30</sub>) fatty alcohols,

at least one surfactant chosen from nonionic and anionic surfactants and

at least one amphiphilic polymer comprising

- at least one 2-acrylamido-2-methylpropanesulphonic acid unit in free form or partially or totally neutralized form of formula (I) below and
- at least one hydrophobic unit comprising from 6 to 50 carbon atoms.



wherein X<sup>+</sup> is chosen from a proton, alkali metal cations, alkaline-earth metal cations and an ammonium ion.

, classified in class 424, subclasses 70.11, 70.122 and 70.16.

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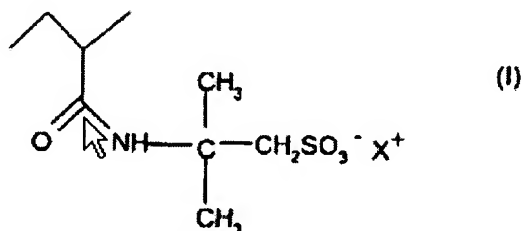
## II. Claims 60-64 are, drawn to

60. A process for oxidation dyeing of human keratin fibers, comprising applying to the keratin fibers

a dye composition comprising, in a support suitable for dyeing the keratin fibers, at least one oxidation dye; and

an oxidizing emulsion comprising at least one oxidizing agent, at least one fatty alcohol chosen from (C<sub>8</sub>-C<sub>30</sub>) fatty alcohols, at least one surfactant chosen from nonionic and anionic surfactants and at least one amphiphilic polymer comprising at least one 2-acrylamido-2-methylpropanesulphonic acid unit in free form or partially or totally neutralized

form of formula (I) below and at least one hydrophobic unit comprising from 6 to 50 carbon atoms,



wherein X<sup>+</sup> is chosen from a proton, alkali metal cations, alkaline-earth metal cations and an ammonium ion.

classified in class 8, subclass 405.

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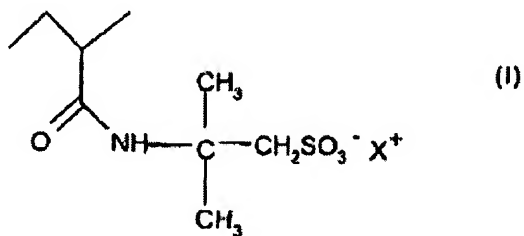
## III. Claims 65-67 are, drawn to

65. A process for treating human keratin fibers in order to permanently reshape the keratin fibers, comprising:

(i) applying to the keratin fibers a reducing composition, wherein the keratin fibers are placed under mechanical tension before, during or after said application,

(ii) optionally rinsing the keratin fibers,

(iii) applying to the optionally rinsed keratin fibers an oxidizing emulsion comprising at least one oxidizing agent, at least one fatty alcohol chosen from (C<sub>8</sub>-C<sub>30</sub>) fatty alcohols, at least one surfactant chosen from nonionic and anionic surfactants and at least one amphiphilic polymer comprising at least one 2-acrylamido-2-methylpropanesulphonic acid unit in free form or partially or totally neutralized form of formula (I) below and at least one hydrophobic unit comprising from 6 to 50 carbon atoms,



wherein X<sup>+</sup> is chosen from a proton, alkali metal cations, alkaline-earth metal cations and an ammonium ion, and

(iv) optionally rinsing again the keratin fibers.

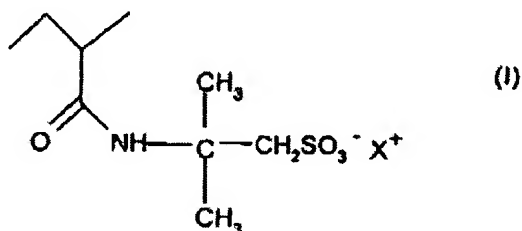
, classified in class 424, subclass 70.1.

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IV. Claims 68-71 are, drawn to

68. A process for bleaching human keratin fibers, comprising:

(i) applying to the keratin fibers an oxidizing emulsion comprising at least one oxidizing agent, at least one fatty alcohol chosen from (C<sub>8</sub>-C<sub>30</sub>) fatty alcohols, at least one surfactant chosen from nonionic and anionic surfactants and at least one amphiphilic polymer comprising at least one 2-acrylamido-2-methylpropanesulphonic acid unit in free form or partially or totally neutralized form of formula (I) below and at least one hydrophobic unit comprising from 6 to 50 carbon atoms,



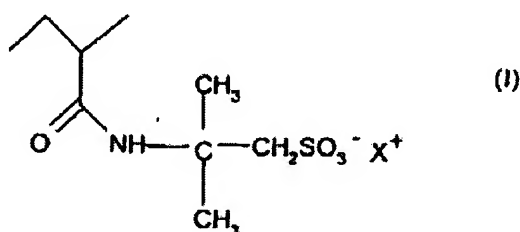
wherein X<sup>+</sup> is chosen from a proton, alkali metal cations, alkaline-earth metal cations and an ammonium ion, and

(ii) rinsing the keratin fibers thus treated.

, classified in class 424, subclass 62.

IV. Claims 70-71 are, drawn to

70. A method for stabilizing the viscosity of an oxidizing oil-in-water emulsion, comprising including in the emulsion at least one amphiphilic polymer comprising at least one 2-acrylamido-2-methylpropanesulphonic acid unit in free form or partially or totally neutralized form of formula (I) below and at least one hydrophobic unit comprising from 6 to 50 carbon atoms,



wherein  $X^+$  is chosen from a proton, alkali metal cations, alkaline-earth metal cations and an ammonium ion,

wherein the emulsion comprises at least one fatty alcohol and at least one surfactant chosen from nonionic and anionic surfactants,  
, classified in class 510, subclass 1+.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II-IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in three distinct process evidenced by applicants.

Although there are no provisions under the section for “Relationship of Inventions” in MPEP § 806.05 for inventive groups that are related to *different methods*, restriction is deemed

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proper because the methods appear to constitute patentable distinct inventions for the following reasons: Groups II-IV encompass methods that are distinct functionally and are not required one for the other. Groups II-IV utilize a common product, but comprise substantively different method steps and achieve different goals. Therefore search and examination of all the methods along with the product in one patent application would result in an undue burden, since the search for the three methods are not co-extensive.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

### ***Election of Species***

*If applicants elect any group, they are further required to elect single disclosed species.*

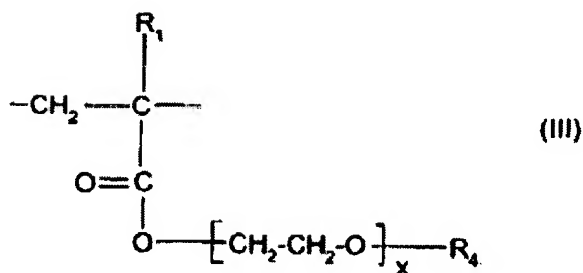
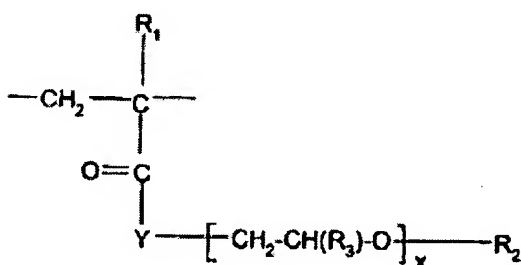
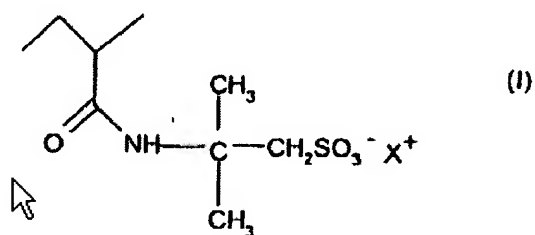
This application contains claims directed to the following patentably distinct species: belonging to compounds of formula I or II or III. If applicant elect formula II or formula III ,



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they are further required to elect species belonging to either formula. The compounds belonging to formula I-III are distinct because there is no common structure between formulae I and III.

Formula II and III are also distinct because of the variables. The compounds belonging to all the formulae represent patentably distinct compounds.



**Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for**

prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-23 and 25-71 are generic.

**Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. *An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.***

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

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The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained.

Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

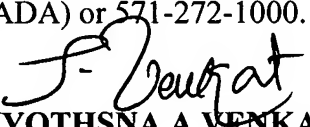
Due to complexity of the action, examiner submitted the Election Restriction requirement in writing in lieu of calling applicant's attorney.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**JYOTHSNA A VENKAT Ph. D**  
**Primary Examiner**  
**Art Unit 1615**

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